

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 292

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

v.

ELMORE & STAHL,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF TEXAS**

**BRIEF OF THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY, GULF,
COLORADO AND SANTA FE RAILWAY
COMPANY AND PANHANDLE AND SANTA FE
RAILWAY COMPANY, AS AMICUS CURIAE.**

The Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company and Panhandle and Santa Fe Railway Company, comprising the Santa Fe Railway System Lines, as amicus, respectfully urge that the petition for a Writ of Certiorari be granted in the instant case. Counsel for both parties have consented to the filing of this brief amicus curiae:

1. The Santa Fe Railway System Lines, operating from Chicago on the East to the California Coast on

the West, and to the Texas Coast on the South, consists of the three companies herein named, The Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company and Panchandle and Santa Fe Railway Company. In shipments of perishable agricultural commodities, delivered for shipment in interstate commerce, one or more of the lines appearing as amicus herein is a connecting carrier with Petitioner, and with other carriers, to whom such perishable commodities are delivered for shipment, and the interest of amicus in this case arises from that fact. Under 49 U. S. C. § 20(11), the originating carrier or any connecting carrier may be the named defendant in an action for damages to property allegedly caused by the carrier while the goods are in transit. Under freight claim rules and regulations governing the allocation of liability among carriers, Amicus may be required, in circumstances similar to those presented in the instant case, to bear a portion of any judgment entered against the originating carrier and to share in the cost of litigation. In 1962 Amicus paid a net amount of \$781,244.00 (total gross payment, less salvage, less amount prorated to other carriers, plus amounts paid to other carriers for Santa Fe's proportion of their claim payments), in satisfaction of claims for carload loss and damage to fresh fruits, melons and vegetables, and frozen fruits and vegetables, and for the five years, 1958-1962, Amicus paid a total of \$4,044,064.00 net in respect to such claims. Therefore, Amicus has a very direct interest in the law governing the liability of carriers for spoilage and decay to perishable goods.

2. The Petition presents a question of substantial

public importance: In the case of perishable commodities transported pursuant to a uniform straight bill of lading, is a common carrier liable at common law for spoilage and decay to such commodities notwithstanding a jury finding that all transportation services were performed by the carrier with due care? The carrier was held liable in the court below, in the face of and despite a jury finding that the carrier was not negligent. Such ruling is in direct conflict with the decision in **Trautmann Bros. Co. vs. Missouri Pacific R. R.**, 312 F. 2d 102 (1962) by the Court of Appeals for the Fifth Circuit, and with a decision of the Court of Appeals for the Ninth Circuit handed down June 3, 1963, in **Larry's Sandwiches Inc. vs. Pacific Electric Railroad**, No. 18,265. The weight of authority on this point, as expressed in **Southern Pacific Company vs. Itule**, 51 Ariz. 25, 74 Pac. 2d 38 (1937) is likewise contrary to the ruling of the lower court in the instant case.

3. Amicus respectfully submits that it should be clearly settled by this court that a common carrier is not liable for the physical deterioration of perishable commodities during the course of interstate shipments, if the carrier has exercised due care and has faithfully complied with the shipper's instructions. As the House of Lords stated with reference to the liability of a water carrier in **F. O. Bradley & Sons, Limited v. Federal Steam Navigation Co. Ltd.**, 137 Law Times Rep. 266 (House of Lords 1927), quoted Petition, p. 52a:

"When the common law makes the ship bear the risks of the voyage and of all that may happen to the cargo in the course of it, but

excepts the act of God, the King's enemies and inherent vice, the scheme is evident. The act of God and the King's enemies neither party can wholly guard against, so the loss lies where it falls. For the rest, the carrier answers for his ship and men, the cargo-owner for his cargo. The carrier has at least some means of controlling his crew and has full opportunity of making his ship seaworthy, but of the cargo he knows little or nothing and, as the shipper has the advantage over him in this respect, he must bear the risks belonging to the cargo."

Respectfully submitted,

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